

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the Cable)	MB Docket No. 05-311
Communications Policy Act of 1984 as Amended)	
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	

COMMENTS OF THE CITY AND COUNTY OF DENVER

The City and County of Denver (“Denver”) appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced docket. Denver is proud of its commitments to community media access and administers funding for Public, Education and Government access (PEG) through internal management of Denver 8 TV and distributions to educational and community organizations it has cultivated partnerships with, such as Auraria Higher Education Center (AHEC), Denver Public Schools/Emily Griffith Technical College (DPS), and Open Media Foundation. Because of the value PEG channels bring to our community and the vital role these channels play in increasing government transparency, educational opportunity and as a critical means of civic engagement, we strongly oppose the tentative conclusion in the FNPRM that the value of cable franchise obligations, such as those that allow PEG programming to be viewed on the cable system, can be deducted from franchise fees. This significant shift in policy would negatively affect Denver’s ability to fund this community asset.

Denver has seen a steady decline in PEG fees paid by cable operators as the media and technology landscape continue to change. As a result of long-term strategic planning, the city is

implementing plans to engage additional community groups to partner in a permanent location for community media access that will increase the robust services offered to our residents. The proposed changes in the FNPRM would have a major impact on the city's ability to provide these services.

PEG monies received from cable operators have been distributed to partners who provide studio and equipment access, and an outlet for residents to broadcast the content that is generated as a result of this access. In addition, Denver 8 TV, whose equipment is also funded in large part by these PEG fees, gives residents the opportunity to view city council meetings, committee hearings, and numerous programs that provide transparency and government accountability and foster civic engagement. Allowing cable operators to determine fair market value of these PEG channels, which the cable operators previously agreed in their franchise agreements would be outside the realm of franchise fees, would allow these operators to place an arbitrary, and potentially inflated, value on these channels. Denver currently operates sixteen channels for PEG programming. By allowing cable operators to reduce franchise fees by the fair market value of these channels, Denver could potentially lose millions of dollars. This monetary loss would force the city to consider eliminating, or greatly reducing, the number of PEG channels currently administered.

The FNPRM presumes that the use of these PEG channels is a contribution to the local franchising authority. In reality, these PEG channels are a valued service to the public, not the city. PEG channels provide valuable content that residents cannot find elsewhere. These channels spotlight a wide range of diversity, celebrate local culture, people and organizations, explore varied perspectives and share information and discussions that support efforts to improve communities.

As an example, Denver 8 TV provides live coverage of important hearings, most of which take place during the day. For a resident who wants to watch these proceedings but has work obligations, Denver 8 TV gives that resident the opportunity to stay up-to-date with their city government. In addition, Denver 8 TV provides essential election programming such as Denver Decides, a series of forums with candidates who are seeking elected office, from the local level to statewide office. Further, community-oriented programs such as “ArtScene” and “Denver Loft Sessions” spotlight the local creative community, while “Your City Now” provides a weekly capsule of city news and community activities.

Our community education partners, such as AHEC, provide important resources to college students with programming created by their peers and coverage of campus events, while EGTC/DPS produce shows such as “Homework-Hotline,” that gives students much needed assistance with daily educational assignments, and “Educa,” which brings important school district information to students and parents in a Spanish language format. In addition, the public access channels provide an outlet for residents to create original programming in such areas as faith, music, humor, and public policy. There is nowhere else on the cable programming lineup where residents can avail themselves of this type of programming.

As detailed above, Denver’s PEG channels provide beneficial local programming that is not otherwise being produced or made available to our residents on any other medium. Yet, the Commission tentatively concludes that non-capital PEG requirements should be considered franchise fees because they are, in essence, taxes imposed for the benefit of LFAs or their designated PEG providers. By contrast, the FNPRM tentatively concludes that build-out requirements are not franchise fees because they are not contributions to the franchising authority. The FNPRM then requests comment on “other requirements besides build-out obligations that are

not specifically for the use or benefit of the LFA or an entity designated [by] the LFA and therefore should not be considered contributions to a LFA.”¹ It is our belief that PEG programming fits squarely into the latter category of benefits that do not specifically accrue to the local franchising authority.

We disagree with the Commission’s conclusion, that non-capital PEG-related provisions benefit the LFA or its designee rather than the public and cable subscribers. The public receives important information and services through PEG channels that would not be available otherwise and it is important to consider these benefits before making a decision that would potentially cripple local PEG programming.

Because of the important role that PEG channels have in our city, we ask that the Commission deviate from its initial finding and conduct a more robust examination into the value PEG channels have for the public. Such an examination would reveal the crucial role that these channels have in the media landscape and the valuable information that these channels provide to residents. To allow cable operators to arbitrarily determine a fair market value for PEG channels and then reduce this amount from franchise fees, would severely inhibit the city’s ability to administer these channels and potentially eliminate this outlet for residents.

Respectfully submitted,



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¹ FNPRM ¶ 21.